

UNITED STATES COURT OF APPEALS

JAN 3 2003

TENTH CIRCUIT

PATRICK FISHER
Clerk

GERALD WAYNE HANNAH,

Plaintiff-Appellant,

v.

KATHLEEN HAWK, Director B.O.P.;
R. T. HOLT, Warden, USP Florence;
TERRY FINNEGAN, Florence Hosp.
Admin.; ROBERT E. WILLIAMS, DO
Clinical Director; P.A.'s Under Dr.'s
Orders; DAVID R. REITER, PA;
VICTOR BOUDET, PA; HASHIM
ERZOUKI, PA; CELESTINO N.
GARCIA, PA; MARVELYN
GUIANG, PA; VALENTIN
HERNANDEZ, PA; J. KNOWLES,
Warden; and VIRGLILO D.
CAMAGAY,

Defendants-Appellees.

No. 02-1211

(D.C. No. 00-WM-848 (CBS))

(D. Colo.)

ORDER AND JUDGMENT*

Before **KELLY, McKAY**, and **MURPHY**, Circuit Judges.

After examining the briefs and the appellate record, this panel has

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is a pro se federal prisoner civil rights appeal seeking monetary damages and injunctive relief claiming deliberate indifference to serious medical needs and cruel and unusual punishment. Mr. Hannah specifically claims that Defendants denied him treatment for a neck injury and failed to respond to complaints of severe neck pain. The magistrate judge recommended that the complaint be dismissed without prejudice for failure to exhaust administrative remedies. The district court adopted the recommendation. Appellant then filed untimely objections. Although untimely, the district court considered the objections and again ordered the complaint dismissed without prejudice for failure to exhaust administrative remedies. Mr. Hannah appeals to this court.

After a thorough review of the briefs and the record, and for substantially the same reasons set forth in the district court's April 2, 2002, Order adopting the magistrate judge's well-reasoned report and recommendation, we hold that no relief is available to Mr. Hannah. Appellant did not exhaust his administrative remedies before filing this suit. However, since Appellant's action was dismissed without prejudice, he may choose to file a new action in the district court once he exhausts his administrative remedies.

The decision of the trial court is **AFFIRMED**. Appellant's letter of September 3, 2002, construed as a motion to supplement the record on appeal with attached supplementary material is **DENIED**. Appellant's "Motion to Supplement the Record and Remand Due to Completion of Administrative Remedies" filed September 16, 2002, is **DENIED**. Appellant's request for appointment of counsel is **DENIED**. Appellant's motion to proceed without prepayment of the appellate filing fee is **GRANTED**; he must continue making partial payments on court fees and costs previously assessed until such have been paid in full.

Entered for the Court

Monroe G. McKay
Circuit Judge